

REMARKS

Claims 15 – 17, 20, 24, 26, 40 – 44, 47 – 52, and 54 – 68 are currently pending with Claims 15 and 47 and new Claim 65 being the pending independent claims.

In the Office Action, the Examiner rejected Claims 15 – 17, 20, 24, 26, 39 – 44, and 47 – 58 under Section 112, first paragraph as allegedly failing to comply with the enablement requirement. In addition, the Examiner rejected Claims 15 – 17, 14, 16, 43, 44, 47 – 52, 57, and 58 as allegedly being obvious over US Patent Application Publication US 2003/ 0068485 to Ramsey in view of US Patent No. 6,370,812 to Burns et al. (“Burns”) and US Patent No. 6,423,251 to Blount.

Each of the foregoing rejections is respectfully traversed and favorable reconsideration is requested in view of the above amendments and following remarks.

I. The Enablement Rejections.

Turning first to the Section 112 issue, the Examiner contends that the claims fail to comply with the enablement requirement of Section 112. The claims recite that the coating forms a barrier “which is effective to prevent termites from forming” termite tubes. The Examiner argues that (1) this means that the treatment must be 100% effective in preventing the formation of any termite tubes on the treated surface and (2) that in the examples in the specification, termite tube formation is reduced, but not completely stopped.

The Applicants respectfully disagree that the term “prevent”, as that term is understood by those of ordinary skill in the art, requires a 100 % effectiveness. To resolve this issue, however, the Applicants have amended the independent claims to specify that termite tube formation is substantially reduced, rather than completely prevented.

In view of these amendments, it is submitted that any enablement difficulties in the claims are overcome, and that the Section 112 rejections should now be withdrawn.

II. The Prior Art Rejections.

Turning to the prior art, the Examiner contends that Claims “15 – 17, 14, 16, 43, 44, 47 – 52, 57, and 58” are obvious over Ramsey in view of Burns and Blount.¹

¹ The Applicants assume the references to Claims 14 and 16 are intended to refer to Claims 24 and 26.

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It is noted that the Examiner has not rejected Claims 39 and 53 based upon the prior art. Thus, it appears that the Examiner considers the subject matter of these claims to patentably define over the prior art. Accordingly, independent Claims 15 and 47 are amended herein to incorporate the limitations of Claims 39 and 53 and specify that the borate solution comprises at least one glycol selected from the group consisting of propylene glycol, monoethylene glycol, diethylene glycol, triethylene glycol, polyethylene glycol, and mixtures thereof. In view of these amendments, Claims 39 and 53 are now cancelled.

In addition, the Applicants have also added new independent Claim 65 to the case. Claim 65 corresponds to the prior version of Claim 47 (without the *Markush* group of glycols) but further specifies that the cementitious building component in this claim is concrete.

In the current prior art rejections, the Examiner contends that the polystyrene foam boards disclosed in Ramsey are a “cementitious building component.” The Applicants respectfully disagree that a person of ordinary skill in the art would consider a polystyrene material to be “cementitious.” However, Ramsey’s polystyrene foam boards certainly do not disclose or suggest a concrete building component or the coating of a concrete building material with a solution comprising water, glycol, and disodium octaborate tetrahydrate. Thus, the cited combination of the Ramsey, Burns, and Blount references fails to render the subject matter of new Claim 65 obvious for at least this reason.

In light of the foregoing, Applicants urge the Examiner to reconsider the application, to withdraw the rejections, and to issue a notice of allowance at the earliest possible convenience.

In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our Deposit Account No. 12-2355.

Respectfully submitted,
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